IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4077 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ASHVIN @ BABU @ BUKER DAMJIBHAI KORAT

Versus

STATE OF GUJARAT

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Appearance:

MR SM CHUDASAMA for Petitioner

MR IM PANDYA AGP for Respondents

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 19/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Rajkot City, on 20th of September, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 20th of September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining took into consideration 7 criminal cases filed against the petitioner for the offences punishable under Sections 454, 457, 380 and 379 of the Indian Penal Code, and secondly, the detaining authority relied upon two in-camera statements as recorded by the sponsoring authority on 14th September, 2004, as verified by the detaining authority on 9th of October,2004. The identify of the witnesses is not disclosed by the detaining authority by claiming privilege under Section 9(2) of the PASA Act.

3. Out of 7 cases, first six cases were registered against the petitioner before Bhaktinagar Police Station, on 30th of September, 2003, 4th of May, 2004, 22nd of May, 2004, 2nd of August, 2004, 6th of August, 2004 and 25th of August, 2004. In each of this six cases, it was alleged that the petitioner was involved in theft of cash amount, VCD, TV, gas cylinder and mobile. The seventh case was registered against the petitioner before Malaviyanagar Police Station, Rajkot City, on 2nd of August, 2004, wherein it was alleged that the petitioner was involved in theft of Air Compressor and other accessories.

4. In two statements above referred, the witnesses referred to incidents occurred on 10th of July and on 27th of May, 2004. In both the cases, petitioner and his accomplices approached the witness and attempted to either sell or pledge the stolen articles and to take money from concerned witnesses for the said goods. On refusal by the witness, each witness was beaten and threatened to kill. Public order in respective area was disturbed.

5. From the above materials, the detaining authority came to the conclusion that the petitioner was an habitual offender and was a dangerous person within the meaning of the PASA Act. The detaining authority thoroughly and exhaustively examined the investigation

papers in all seven cases of theft. The detaining authority concluded that the petitioner was headstrong and ferocious person and was in habit of administering threats to innocent citizens and to beat them. It was alleged that the petitioner formed a gang of headstrong persons and along with the said gang, committed the offence of theft, and on account of activities of the petitioner, fear and terror was spread among the locality. So, none dared to file any complaint against the petitioner. The detaining authority concluded that the activities of the petitioner were prejudicial to the maintenance of public order and were required to be prevented forthwith. After considering other alternative remedies available against the petitioner under the general law, the detaining authority reached to the subjective satisfaction that there was no other alternative except to detain the petitioner under the PASA Act as dangerous person to prevent his illegal activities forthwith. The detaining authority therefore passed an order of detention of the petitioner, as aforesaid, which is under challenge in this petition.

6. Learned advocate Mr. S.M.Chudasma for the petitioner and learned AGP Mr.I.M.Pandya AGP for the respondents were heard at length. The affidavit-in-reply as filed by the detaining authority, as placed on record by the learned AGP, is also taken into consideration.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue whether the detaining authority applied mind properly to the materials placed before him in arriving at subjective satisfaction.

8. The grounds of detention placed on record make it abundantly clear that the petitioner was in judicial custody in all seven cases registered against him, when the order of detention was executed and served upon him on 20th September, 2004. The grounds further reveal that in this respect the detaining authority reached to the subjective satisfaction that though the petitioner was in judicial custody in all seven crimes registered against him at the time of execution of the order of the detention, but, however, at any point of time the petitioner was likely to move application for bail in the said cases and after releasing on bail the petitioner was likely to continue his illegal activities.

9. The facts of the present case are squarely

covered by the decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, as reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not held a cogent material and the detention order based on such material was held liable to be quashed.

10. True it is that the order of detention can be passed and executed upon the detenu, even if, the detenu is in judicial custody. The judicial custody necessarily implied that the detenu is out of circulation and in confinement. Therefore, in this respect the law is established that though the order of detention can be passed and executed, even if, the detenu is in custody, then the subjective satisfaction of the detaining authority that the custody of the detenu was likely to be ended, must be based upon the cogent materials. This is the ratio laid down by the Apex Court in the matter of Amritlal [supra]. In the present case, it becomes clear from the grounds of detention that the petitioner-detenu was arrested on 25th August, 2004 in a crime registered against him before Bhaktinagar Police Station, right from 25th of August, 2004 the detenu was in judicial custody in all seven cases. The detenu-petitioner had not even moved any bail applications in such cases which becomes clear from the grounds of detention because the detaining authority mentioned in the grounds that the detenu-petitioner was likely to move applications for bail in the said seven cases. Though the Apex Court made it clear in above said decision that the filing of an application for bail is not itself a cogent material to infer that the detenu-petitioner was likely to be released on bail. In the present case, the petitioner had not preferred even applications for bail till the execution of the order of detention. The subjective satisfaction, therefore, arrived at by the detaining authority that firstly the petitioner was likely to move applications for bail and again going further that on filing of such applications for bail, the petitioner was likely to be released on bail, is not based on any materials placed before the detaining authority let alone any cogent material. Learned advocate for the petitioner makes a statement that subsequently the petitioner filed applications for bail and he might have been released on bail. The point in issue is whether the detaining

authority applied mind properly in arriving at subjective satisfaction. In the above view of the matter, it becomes clear that on two aspects, firstly for moving applications for bail and secondly releasing the petitioner on bail, no material at all appears to have been placed before the detaining authority and the detaining authority reached to the positive conclusion in this respect. In both the above aspects, the subjective satisfaction arrived at by the detaining authority is not valid, legal and in accordance with law. The order under challenged, therefore, is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by the Police Commissioner, Rajkot City on 20th September, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Ashvin alias Babu alias Buker Damjibhai Korat is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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